

Town of Brookline
Advisory Committee Minutes

Harry K. Bohrs, Chair

Date: April 10, 2014

Present: Harry K. Bohrs, Carla Benka, Clifford M. Brown, Sumner J. Chertok, Lea Cohen, John Doggett, Bernard Greene, Kelly A. Hardebeck, Nancy S. Heller, Angela Hyatt, Alisa G. Jonas, Bobbie Knable, Fred Levitan, Pamela Lodish, Sean M. Lynn-Jones, Shaari S. Mittel, Michael Sandman, Lee L. Selwyn, Charles Swartz, Leonard A. Weiss, Karen Wenc, Christine Westphal

Absent: Amy F. Hummel, Systke Humphrey, Stanley L. Spiegel, Janice S. Kahn,

The meeting was called to order at 7:00 PM.

1. Agenda Item: Reserve Fund Request HR

See Appendix for Request

Also Present: Sandra DeBow, HR Director

Discussion:

Request for \$111,000 to cover unanticipated expenses:

- A. Hired 2 large public safety classes this year – typically don't do in one fiscal year – 12 firefighters + 9 police officers

Police chief has started to build a pipeline in the dispatchers, which is good, but then dispatch vacancies open with new firefighters.

\$12,000 for medical, drug plus psychological evaluation – expensive process but well worth it. Pre-employment screening.

- B. Advertising in recruitment – lost Town Counsel unexpectedly. Losing library director. Aging work force. They are using online for hiring, but at high level professional positions, need to cast a broad net.

\$2,000 for recruiting and advertising.

- C. ASFCME has started filing grievances plus unfair labor practices. Grievances don't incur expenses right away but unfair labor practices are costly in terms of attorney costs. They are pushing back by reaching out to unions and being more proactive / build better relations with them, to get rid of these small grievances that take time and money; but even with frivolous MCADP claims that will get kicked out, Town still has to defend it. In these cases, unions are reluctant to settle because of fear of litigation.

D. Finally, new payroll system has taken a lot of DeBow's time so she is unable to do the same amount of triage before sending it to legal counsel. This is getting better but also with one legal counsel less.

Need \$97,000 for end of FY 2015 for from March to June.

Discussion:

Q: What are MCADP and Grievances costs v. others? A: Most of legal costs have to do with bargaining and work towards preventing legal work arising. Most drop off at the lower level at the MCADP. Also had to do class and pay plan due to overtime issues. Huge analysis and a lot of budget went to that. Analysis of wage laws.

Bohrs: Regardless of how cases end up, town must defend itself with due diligence. Most MCADP claims are disability related claims (which don't belong before MCADP).

Q: Average cost of MACDP claim? A: \$25-40,000, just to get to the point of a determination that there is no probable cause.

Vote: Upon motion duly noted and seconded, the committee voted in regard to the Motion for Reserve Fund in the amount of \$111,000:

15 in favor, unanimous.

2. Agenda Item: WA 25. Acceptance of Section 20(6) of Massachusetts General Laws, Chapter 32 -- pay Retirement Board members a stipend of up to \$4,500. (Retirement Board) (Schools)

Presenting for the subcommittee is: Len Weiss

Also Present: Gary Altman, Retirement Board Member and Retirement Director, Frank Zecha

Discussion:

This has come before Town Meeting several times before. MA law allows members to receive stipend for Retirement Board. 5 member board: Currently 3 town employees w/salary. 2 are not town employees and warrant would allow all 5 to receive stipend. Permitted by law to receive stipend up to \$4,500. About 70% of towns receive stipend; 30% do not. Nothing has changed significantly in their interim since the last time this was rejected by Town Meeting.

Subcommittee: Voted: 1 in favor; 2 opposed. Primary consideration is that there is a lot of volunteer boards in town and it's kind of a beauty contest about who works harder. What has changed in terms of effort is there is much more personal disclosure around conflict of interest.

Q: No less than \$3,000 or up to \$4,500 – who decides? A: Board decides.

Q: Where does the stipend come from? A: it would come out of the funds invested in the pension fund.

Altman: Retirement Board sought permission to bring this to Town Meeting. Why now? Financial disclosure forms are quite onerous. Has to reveal businesses his full family is involved with. Also assets, mortgage, etc. He's been on the board more than 10 years without stipend. Enjoys it and would do it with or without stipend. Must complete 18 hours of mandatory training now over 3 years.

Q: How often do they meet? A: Required by statute monthly. Also meet more frequently, as needed.

Q: Are you incurring expenses to comply with law that you haven't previously incurred? Why do you believe you should get this stipend? A: No expenses. Because the legislature had said it's a local option that must be passed by local legislature.

Comment: Stipend would encourage people to volunteer for the Board who may not have the means to be on the board without the stipend. Intangible costs of serving on the board.

Q: How is the fund doing? Latest return rate is close to 12%. 25 year number is over 8%. Assets of \$254 mil; prior \$222 mil since last calendar year. 850 retirees paid pays out benefits; board has benefit hearings, disability hearings; as well as managing the board.

Q: 2 people appointed by the BOS. Treasure and Comptroller? A: Yes. 2 people are elected by the active members of the union – does the Town allow people to take time off? One is active employee firefighter in administrative office; one is retired. Alt is the neutral member.

Q: Why are the minutes of the Retirement Board not available? A: Their minutes are available if asked, although one member of AC says he requested minutes and they were not furnished. Since some issues are confidential, Board chose not to post them on the website. But he can request them directly from retirement board.

Comment: Not all members of the Board are looking for a stipend.

Comment: Not in favor of this; lots of people in town volunteer lots of time, more than 1x a month, much more. We have one true volunteer and 4 people who are town employees, past or present; and many people in town would gladly volunteer for this position. Brookline has a long tradition of people volunteering for things and he sees no need to change this.

Comment: Investment decisions are being made by investment professionals; trustees role is to choose the right advisors, the asset allocation, do RFPs, chose firms. Also severe liability to the unfunded liability of the town, should they make mistakes.

Vote: On Motion, duly Seconded, for favorable action on Art. 25:

To approve 5 in favor, 11 opposed.

3. Agenda Item: WA 26 – An Act to Repeal The Board of Selectmen’s Authority to Sell Taxi Medallions (Petition of John Harris) (TAXI Ad Hoc: Levitan)

Presenting for the subcommittee is: Fred Levitan

See Appendix for Report of Subcommittee.

Also Present: Todd Kirrane, Transportation Administrator; John Harris, Petitioner

Discussion:

Levitan: This process for going to medallions has been going on almost 20 years. Their consultant has worked out a system that will increase the quality of cabs and service to all people. The projected funds coming back to the town is \$10-16 million, depending on the auction prices. This is a 3 phase process, which they hope will change the system that was not open to new companies coming in, and will allow individuals to buy 1 – 3 cabs and run them as a business in the town. This plan was developed with the taxi companies, through a workgroup. They brought this to Town Meeting who was positive about this but concerned about whether cab drivers could buy medallions – financing is available through local banks here. This will create value for the owner, since currently with a license system, there is no value (license can be revoked at any time); medallions will become a tangible asset, but actual taxi rates to ride a cab are set independently by the town.

Harris: He proposed WA 26 because Brookline is moving forward radically and making a serious mistake, implications of which will be felt for centuries, without proper debate. Brookline needs a healthy cab environment in order to have a healthy multi-faceted transportation plan/ system. Taxi medallions will, according to him, destroy our possibility of a positive, healthy, minimal transportation environment, by limiting the number of taxi cabs in Brookline. Will have a devastating effect on your life in Brookline.

Comment: Petitioner wants free entry for taxis into market, but the article doesn’t do this. It would revoke BOS ability to sell medallions, but keeps licensing system in place. This warrant is entirely factually inaccurate. For example, we already have a surplus of cabs. Purpose of medallion is to give owners ability to purchase new cabs. Cabs in Brookline are not in good shape; they’re a wreck and there is no financial incentive to put a nicer vehicle on the road. If we allow owners to capitalize with medallions, they will be able to invest in their business as cab owners.

Comment: We need to administer taxi cabs on our streets, and with a wide open market, we can’t administer them, we wouldn’t have a place to put all these cabs, either.

Q: How do medallions provide an incentive to invest in their cabs? A: It’s not an incentive, but if you purchase a medallion, you’re spending substantial amount of money for a property right; you can then use that to borrow money to buy a new vehicle, and regulations will require a new vehicle. Every time a medallion is sold, the new owner has to buy a new vehicle. There will be life span for owners to be required to buy new vehicles. Brookline Bank has expressed in interest in getting into this area, where medallion owners can borrow funds against their medallion.

Comment: In Boston, when Menino started to impose regulations, Boston cabs really cleaned up their act.

Kirrane: How will our taxi medallion system be different than others? The Globe series scapegoated the medallion system as the problem. Menino had a study of the medallion system, and found that the problem was that Boston had tough regulations on medallion system, but regulators had created personal relationships with certain medallion owners; one owner who everyone complained about, the regulators looked the other way. The study recommended that the City of Boston/ where the Police Department regulates the industry – gave them 2 years to start enforcing the medallion system, and if they don't get their act together, they will create an independent authority to regulate it. Such as we have here. It was a question of corruption.

How is Boston industry different? Doesn't have a strong dispatch – hotels, airport, and university – almost no dispatch. Ours is much smaller, and 70% is dispatch-related, from people calling to come pick them up. One of largest user is senior population. Brookline is a much smaller system. Right now we have 14 owners, and want to bring in small owners, which tend to provide better service, so limit # of medallions to 1-3, with preference for the 1's. This will be new in Brookline. Eventually as current medallion owners start liquidating, it will provide new opportunities. They have put 3 companies out of business in the last years, for companies with high level of complaints.

Q: How do you regulate and what recourse do you have with medallions? A: They are crafting regulations to provide ultimate authority to revoke medallion. It is a force of sale, to avoid having to take away their property rights. The sale must be approved by the Transportation Board, and funding must go through reputable institutions. Their expert looked at the town and concluded that this plan was financially feasible, allow us to have handicap accessible vehicles, and allow the town to capitalize. Part of multi-modal transportation approach for Town – zip cars, public transit, bicycles, etc. – is a solid taxi industry.

Q: How do taxi drivers make money? Paying for their taxi medallion loan, buying new taxis, etc.? And will our fees go up? A: We expect the owners will buy the medallions, lease these out to drivers (\$700 / week is going rate); driver gets the fare and pays gasoline.

Q: We set taxi rates? A: Yes, the town controls that.

Comment: The buyer is buying the right to run a business for an unlimited amount of time. Implicit in that value, is that you feel your capital will return enough to enter into the taxi business. You also take on the risks, such as being in a disruptive cycle, such as Uber service.

Comment: Uber App allows people to use their own car and pick people up, and that is impacting the cab industry. Completely unregulated, uninsured, etc. At this point.

Todd: Some of the drivers will buy their own medallions; not just cab companies. Boston is doing training programs, and also penalizing bad drivers and taking away their right to work there – so they are coming into Brookline. For the first time, we've instituted a program for cab drivers, to start weeding out poor drivers.

Comment: Cab companies are making big money in Brookline, and that is why we want to capitalize on this for the town by selling Medallions.

Q: How much does average cab driver earn? A: Typically net \$35,000 / year. It is a tough and low priced job. But they will at least be driving new cabs, with lower fuel usages, for example.

Comment: The argument that there hasn't been enough discussion to implement a medallion system is completely wrong. We have been involved in this in Brookline for years, and prohibiting us to move forward would have no benefit.

Comment: Brookline can bring in approx. \$14mil to add to our pension fund; and also regulate our cab system.

Vote: Upon motion duly noted and seconded, the committee voted in regard to revoking town's ability to issue medallions

0 in favor, 18 opposed, 1 abstained.

4. Agenda Item: WA 29. Resolution Regarding the Support of Brookline's Local Economy Community. (Petition of Brookline Local First) (Capital: Lodish)

Presenting for the subcommittee is: Pam Lodish

See Appendix for Report of Subcommittee.

Also Present: Kara Brewton, Economic Development Officer and Petitioner Brookline Local First

Discussion:

Lodish: At first blush, this seems positive. A resolution to encourage growth of local businesses. 70 members of Brookline Local First, part of broader network, and Brookline Local First will continue regardless of outcome of this resolution. But this only applies to independent businesses, not to franchises, nor to big stores such as Gap. They heard from Hsiu-Lan Chang, owner of local franchise business who contributes tremendously to the community. Lodish has a local trainer who owns a franchise who contributes a lot to the community; Chamber of Commerce also said they would have a strong campaign around 'shop in Brookline' for all businesses in Brookline, if this warrants goes to no action.

Also note that Town of Brookline is unable to purchase some of the goods and services it requires within the boundaries of Brookline. It seems counterproductive to support efforts of Local first, which will create division without any benefit to Brookline. Committee voted 4-0-1 and the abstention is chair of the Chamber of Commerce.

Comment: Local First was create as a national organization with local franchise but now it has been pulled back to be a Massachusetts umbrella, so quite ironic. Supporting local 'independent' business is problematic and exclusionary, and especially when suggesting procurement exclusion. Q: Would this resolve permit a franchise owner to be part of the procurement policy? Answer: He just wants this to start a conversation; no direct answer from petitioner but Bohrs comments that resolve excludes franchises from procurement.

Comment: This exclusion of franchise owner is a very narrow provincial view of local businesses. Elias Audy's Mobil company – what local oil company should we be buying from? This would be a good resolution if it came back to us without the word 'independent'.

Q: Any locally owned banks in Brookline? A: No.

Q: How do we know that in Brookline, for every \$3 spent, \$2 comes back to Brookline locally? Has this been studied for Brookline? A: This is why we should have the discussion. No answer directly to this question.

Q: Did the subcommittee consider any amendments to the resolution? A: Moderator said we can't strike the word 'independent'. Chair Benka didn't consider an amendment knowing the Chamber of Commerce will be coming forward with a more inclusive warrant in the fall.

Comment: What is important to me as resident of Coolidge Corner is to have a vibrant business environment – which includes Trader Joe's, Otto's, for example. And Panera's.

Q: Do we still have a high % of Mom/Pop stores, compared to our neighbors? A: Yes, over 50%, especially with the restaurants.

Comment: Views this article as discriminatory and sets two different kinds of local businesses. As his experience as a parent, the organizations that have given the most to the schools and community are: Star Market, JP Licks, Trader Joes, Brookline Bank. If we were to pass this, we would be sending the wrong message. It is not healthy for the business community and not for Brookline.

Petitioner argues we are sending the wrong message to independent businesses.

Comment: Put your money where your mouth is – that's why Brookline Booksmith has survived, and Barnes & Noble hasn't.

Brewton: EDAP voted no action on Article 29; and recommended the Town Administrator create a 'shop Brookline Task Force' and see where purchasing could be shifted to Brookline. And BOS declare an annual 'Brookline shop local.'

Vote: Upon motion duly noted and seconded, the committee voted in regard to WA 29:

0 in favor, 18 opposed, 1 abstained.

5. Agenda Item: WA 31. Resolution Relative to Non-Discrimination on the Basis of Gender Identity and Expression. (Petition of Alex Coleman) (Schools)

Presenting for the subcommittee is: Sharri Mittel

See Appendix for Report of Subcommittee.

Also Present: Petitioner Alex Coleman

Discussion:

Amendment by Stanley Spiegel: see last paragraph of Report for amended language.

Petitioner: There is still no protection in the state law for public accommodations, but it is included in this warrant article. So there are many discrepancies in legal protection for transgenders across different areas. He also reviewed Brookline's bylaws and found no mention of transgender protection. This will be very positive for the image in Brookline as well as being inclusive for everyone. There is still so much discomfort not to mention discrimination and outright hostility / high suicide rate, for example, directed at transgender people. It's time to up the education and acceptance of transgenders and issues.

This includes changing language so it's not, especially he or she – singular pronouns can be referred to as 'child' rather than 'son/daughter' and make it plural rather than s/he.

Comment: Part of the curriculum for health and sexuality in Brookline schools includes gender identity issues, and she's proud and pleased to support this article.

Vote: Upon motion duly noted and seconded, the committee voted in regard to the Subcommittee's recommendation with the amendments:

18 in favor, unanimous.

Motion to adjourn, unanimous.

The meeting was adjourned at 10:00 PM.

Appendix:

- A. Subcommittee Report on WA 25 and supporting documents**
- B. Subcommittee Report on: WA 26 and supporting documents**
- C. Subcommittee Report on WA 29 and supporting documents**
- D. Subcommittee Report on WA 31 and supporting documents**
- E. Request for Reserve Fund Transfer**

MEMORANDUM

Human Resources Office

TO: Betsy DeWitt, Chair, Board of Selectmen
Harry Bohrs, Chair, Advisory Committee
Melvin Kleckner, Town Administrator

FROM: Sandra DeBow, Director of Human Resources

SUBJ: Reserve Fund Transfer Request

DATE: March 24, 2014

We respectfully request a reserve fund transfer in the amount of \$111,000 to fund the Human Resources budget for pre-employment medical and psychological exams, advertising and outside Labor and Employment legal costs, through the end of FY2014.

Pre-Employment Exams: When hiring police, fire and Emergency 911 dispatch candidates, we use medical and psychological screens as a condition of employment. The pre-employment account funds the medical expenses associated with hiring new employees. Due to the nature of the work, these physical and psychological evaluations are comprehensive and costly. During this fiscal year, we hired 12 Firefighters and are currently hiring nine police officers. We have also hired a number of Emergency 911 dispatchers. It is unusual to hire both police and fire candidates in one fiscal year, each with large classes. Further, some of the candidates were from our own 911 dispatchers center. Although excellent hires, they have created vacancies in the dispatch center. Therefore, we are seeking an additional \$12,000 to cover the expenses of the fire candidates and our normal seasonal hiring for the remainder of the year.

Advertising and Recruitment: The Town had not anticipated hiring two department heads during FY14, e.g., Town Counsel and Library Director. The HR Office has been actively expanding our applicant pools by broadening our range of recruitment. Although we have found several efficiencies over the last couple of years that both expand the pool and save money, this is not possible with higher level positions. For professional positions we post in both print media and on-line using a broader array of professional journals and associations with job boards. We have also sought to place ads in professional affinity associations and journals, where possible. This has resulted in additional costs to our advertising budget and we are seeking \$2,000 for our advertising and recruitment budget.

Legal Costs: The increased costs of our outside counsel are due to several complex cases that are now in the expensive discovery phase. Some of these we have attempted to settle as a means of reducing litigation costs but the parties remain too far apart and we do not anticipate settling. We also expended unanticipated funds on the use of an attorney who helped us analyze our Class and Pay Plan under the federal Fair Labor

Standards Act. This work was necessary following the litigation that led to Town Meeting's revocation of MGL Ch. 149, Sec. 33B at the November 2013 Town Meeting.

Regarding labor costs, we have had some success in reducing our legal costs with AFSCME, who had adopted a new strategy of filing Municipal Unfair Practices (MUPs) rather than filing grievances. (The filing of a MUP results in immediate litigation costs. Alternatively, a grievance does not involve legal costs until arbitration.) We have had recent success in settling some issues with AFSCME and having them withdraw the grievances and/or MUPs. We are taking a similar approach with some police grievances and MUPS. These efforts are important and we are creating more strategies to build better labor relations.

However, it is important to underscore the unpredictability of claims being made. In the last couple of weeks we have worked to settle certain grievances/MUP avoiding \$15,000-20,000 in legal costs only to receive five MCAD complaints last week (gender/disability – one against the Town and four against individuals). These claims are being made by an employee who has already filed three grievances and one MUP, on the same matter. The Union will not settle these grievances due to its own fear of being sued by the employee and they cannot settle the MCAD claim, which is an individual claim of the employee.

The negotiation for both the Police and Fire unions has been protracted and therefore costly. Police are firmly intent on moving toward arbitration before the state's Joint Labor Management Commission (JLMC) rather than settling before May's 2014 Town Meeting. Likewise, although we have just started negotiating with the Fire union they seem poised to take the longer road to arbitration, to see what the Police Union gets, and bargain from that perspective. Therefore, it is highly unlikely that they will be settling during the current fiscal year, although we do continue to work toward that goal.

Finally, the staffing of the Town Counsel and Human Resources offices has impacted the use of outside counsel. The Town has been without a Legal Advisor since September 2013 causing a staffing shortage as the senior attorney has been functioning as Acting Town Counsel. Also, the adoption of the new Payroll System has strained staffing resources in Human Resources. The Human Resources Director, an attorney, who performs some preliminary legal analysis for labor and employment matters before referring it outside (or in-house), has not been available to perform these triage duties due to the increase workload. Therefore our legal costs have increased as some work that would have been performed in-house went to outside counsel. (We anticipate both these staffing issues will be remedied in the next couple of months.)

Generally, our monthly costs hover around \$10,000-\$13,000. This year our monthly legal costs exceeded \$20,000 a month, on average. Therefore, we anticipate we will need an additional \$97,000 for the end of the FY2014.

Thank you for your consideration of this matter.

TOWN OF BROOKLINE

Request for Reserve Fund Transfer

To the Board of Selectmen:

Date: April 3, 2014

It is hereby requested that you approve and transmit to the Advisory Committee the following Reserve Fund Transfer:

Department Human Resources Total Transfer Requested \$ 111,000

Org # 14201420 Object # 524020 Legal AMOUNT \$ 97,000

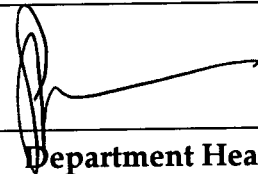
Org # 14201420 Object # 524028 Pre Employment AMOUNT \$ 12,000

Org # 14201420 Object # 524060 Recruitment Advt AMOUNT \$ 2,000

Org # _____ Object # _____ AMOUNT \$ _____

Org # _____ Object # _____ AMOUNT \$ _____

Description (or attach memorandum): Please see attached memo.



Department Head

Approved:

Board of Selectmen